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of:                    Working Party on Integration, Migration and Expulsion

on:                    17 and 22 November 2011

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No. Cion prop.: 12208/10 MIGR 66 SOC 461 CODEC 689 + ADD 1, ADD 2

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Subject:            Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment

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At the meetings of the Working Party on Integration, Migration and Expulsion on 17 November and 22 November, Presidency compromise suggestions for Articles 1-3, 5-7b, 9-13, 15-16 and 18 of the above proposal were discussed. The results of the discussions at the above meeting have been incorporated in the text of the previous outcome of proceedings and are set out in the Annex, with delegations' comments in the footnotes.

Proposal for a  
**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**on the conditions of entry and residence of third-country nationals for the purposes of**  
**seasonal employment**<sup>1</sup>

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular

Article 79(2)(a) and (b) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> **AT, BE, BG, CZ, DE, EE, EL, ES, FI, FR, HU, IT, LT, LV, MT, NL, PL, PT, SE, SI, SK:** general scrutiny reservations. **AT** reservation relates mainly to subsidiarity, legal base and labour market concerns. **NL** reservation relates mainly to subsidiarity. **BG:** legal basis should also include Article 153 of the Treaty. **LT, MT, SE:** parliamentary scrutiny reservations. **AT, EL, DE, LT, SE:** linguistic reservations. **AT, DE, SE:** scrutiny reservations on all the **Pres** suggestions contained in this document. **CZ, EL:** reservations (related to subsidiarity and inclusion of short-stay visas in the scope of this Directive), **AT, DE, MT, PL** (related to the compatibility of the criteria in the Visa Code and in this Directive for issuing short-stay visas).

Whereas:

- (1) For the gradual establishment of an area of freedom, security and justice, the Treaty provides for measures to be adopted in the fields of asylum, immigration and protection of the rights of third-country nationals.
- (2) The Hague Programme, adopted by the European Council on 4 and 5 November 2004, recognised that legal migration will play an important role in advancing economic development, and asked the Commission to present a policy plan on legal migration, including admission procedures, capable of responding promptly to fluctuating demands for migrant labour in the labour market.
- (3) The European Council of 14 and 15 December 2006 agreed on a series of steps for 2007, which include the development of well-managed legal immigration policies that fully respect national competences, in order to assist Member States in meeting existing and future labour needs. It also called for means to be explored to facilitate temporary migration.
- (4) The European Pact on Immigration and Asylum, adopted by the European Council on 15 and 16 October 2008, expresses the commitment of the European Union and its Member States to conduct a fair, effective and consistent policy for dealing with the challenges and opportunities of migration. The Pact forms the basis of a common immigration policy guided by a spirit of solidarity between Member States and cooperation with third countries and founded on proper management of migratory flows, in the interests not only of the host countries but also of the countries of origin and of the migrants themselves.
- (5) The Stockholm Programme, adopted by the European Council at its meetings of 10 and 11 December 2009, recognises that labour immigration can contribute to increased competitiveness and economic vitality and that, in the context of the important demographic challenges that will face the EU in the future with an increased demand for labour, flexible immigration policies will make an important contribution to the Union's economic development and performance in the long term. It invites the European Commission and the European Council to continue implementing the Policy Plan on Legal Migration.

- (6) This Directive should contribute to the effective management of migration flows for the specific category of seasonal temporary migration by setting out fair and transparent rules for admission and stay, while at the same time providing for incentives and safeguards to prevent temporary stay from becoming permanent. In addition, the rules laid down in Directive 2009/52/EC of the European Parliament and of the European Council providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals will contribute to avoiding such temporary stay turning into illegal stay.
- (7) This Directive should be applied without prejudice to the principle of Union preference as regards access to Member States' labour market as expressed in the relevant provisions of Acts of Accession. Therefore, nationals of the Member States concerned should be given preference over third-country nationals, during the transitional period specified in the relevant provisions of the Acts of Accession, with respect to access to the labour market.
- (8) This Directive should be without prejudice to the right of the Member States to determine the volumes of admission of third-country nationals coming from third countries to their territory for the purposes of seasonal work as specified in the Treaty.<sup>2</sup>
- (9) This Directive should not affect conditions of the provision of services in the framework of the Treaty. In particular, this Directive should not affect the terms and conditions of employment which, pursuant to Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, apply to workers posted by an undertaking established in a Member State to provide a service in the territory of another Member State. Nor should this Directive apply to workers posted by undertakings established in a third-country to provide a service in the territory of a Member State.<sup>3</sup>

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<sup>2</sup> **IT:** reservation, **DE:** scrutiny reservation on the Recital. **AT, DE, EL:** the Recital should be worded along the lines of Recital 8 in the Blue Card Directive referring to the option of granting 0-quota. **NL** agreed that MS should be allowed to have 0-quota.

<sup>3</sup> **AT:** scrutiny reservation on the Recital.

- (10) Member States should be able to determine specific sectors of the economy and/or activities that meet the criteria for seasonal work as defined in this Directive **such as agriculture, during the planting or harvesting period, or tourism, during the holiday period.**
- (11) It should only be possible to apply for admission as a seasonal worker while the applicant is residing outside the territory of the Member States.
- (12) The Directive should not affect, where granted, the rights of third-country nationals already legally staying in a Member State to work.
- (12a) This Directive [...] **should** be without prejudice to the right of Member States to issue a **short-stay visa or a long-stay visa or a residence permit** other than a **visa for the purpose of seasonal work or a seasonal worker permit** for any purpose of employment if a third-country national does **not fall under the scope of this Directive.** [...]
- (13) The Directive should provide for a flexible entry system based on demand and objective criteria, such as a valid work contract or a binding job offer that specifies the level of remuneration applicable to seasonal workers in the sector concerned.
- (13a) [...]**
- (14) Member States should have the possibility to apply a test demonstrating that a post cannot be filled from within the domestic labour market.
- (14a) Member States should be able to reject an application for admission in particular when the third-country national has not complied with the obligation arising from a previous admission decision as a seasonal worker to return to a third country on the expiry **of a short-stay visa or a long-stay visa or a seasonal worker permit.**

- (14b) Member States should be able to require the employer to cooperate with the competent authorities and to provide all relevant information **needed for granting, withdrawal or non-renewal of the authorisation for the purpose of seasonal work [...]** in order to prevent possible abuse and misuse of the procedure set out in this Directive.
- (15) Provision for a single procedure leading to one combined permit encompassing both stay and work permit, should contribute to simplifying the rules currently applicable in Member States. This should not affect the right of Member States to determine the national authorities and the way they should be involved in the single procedure, in accordance with national specificities of administrative organization and practice.
- (15a) Member States should have the possibility to issue a work permit for the purpose of seasonal work when the single application procedure does not apply.**
- (16) Member States should be able to determine the maximum duration of stay for the purposes of seasonal employment within any period of twelve months referred to in this Directive.
- (16a) The possibility to change employers is important to reduce the risk of abuse that seasonal workers employed by one single employer might face.<sup>4</sup>
- (17) Circular migration of third-country national seasonal workers should be promoted. In order for seasonal workers to have employment prospects in the EU for periods beyond a single season and for EU employers to be able to rely on a more stable and already trained workforce, the possibility of access to seasonal employment for several consecutive years should be provided, either through [...] **multiple-entry visas or three seasonal worker permits issued in one administrative act** or a facilitated procedure. This procedure should include preference over admissions of third-country nationals applying to be admitted as seasonal workers for the first time or reduced processing times, or less documentary evidence being required.

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<sup>4</sup> **AT:** scrutiny reservation. **EL** suggested to redraft or delete the recital because it is not appropriate to refer to the risk of abuse in this context. **DE** also stated that the possibility to change employers should not be linked to abuse only as there might be other situations where it might be necessary to change employers, e.g. when the employer goes bankrupt.

- (18) A set of rules governing the procedure for examining applications for admission as a seasonal worker should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of Member States' administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned.
- (19) In order to ensure that seasonal workers have adequate accommodation during their stay, including at a reasonable cost, provision should be made to require applicants to provide the evidence of the accommodation they or third-parties provide.
- (19a) Third-country nationals who are in possession of a valid travel document and an authorisation for the purpose of seasonal work issued under this Directive by a Member State applying the Schengen acquis in full, should be allowed to enter into and move freely within the territory of the Member States applying the Schengen acquis in full, for a period up to three months **in any six-month period** in accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and Article 21 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (Schengen Implementing Convention).”
- (20) Considering the specially vulnerable situation of third-country national seasonal workers and the temporary nature of their assignment, there is a need to define clearly the working conditions applicable to such workers in order to ensure legal certainty by referring such conditions to generally binding instruments providing effective protection of the rights of third-country seasonal workers, such as law or universally applicable collective agreements.

- (21) In the absence of a system for declaring collective agreements of universal application, Member States may base themselves on collective agreements which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or collective agreements which have been concluded by the most representative employers' and labour organisations at national level and which are applied throughout national territory.<sup>5</sup>
- (22) Third-country national seasonal workers should be granted equal treatment in respect of those branches of social security listed in Article 3 of Regulation (EC) No 883/04 on the coordination of social security systems. This Directive should not confer more rights than those already provided in existing EU legislation in the field of social security for third-country nationals who have cross-border interests between Member States.

Furthermore, this Directive should not grant rights in relation to situations which lie outside the scope of that EU legislation such as, for example, to family members residing in a third country. This is without prejudice to the non discriminatory application by Member States of national legislation providing for de minimis rules on contributions to pension systems.<sup>6</sup>

**(22a)** [...]

- (23) To facilitate enforcement, relevant designated third parties such as trade unions or other associations should be able to lodge complaints in order to ensure effective application of the Directive. This is considered necessary to address situations where seasonal workers are unaware of the existence of enforcement mechanisms or hesitant to use these in their own name, out of fear of possible consequences.

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<sup>5</sup> **AT:** the recital should be deleted.

<sup>6</sup> **LV:** The recital should be made more precise along the lines of Recital 23 in the "ICT proposal". **CZ** suggested to delete "... such as, for example, to family members residing in a third country" and add the following new sentence: "*This Directive should not confer any rights on family members of seasonal workers.*"

- (24) Since the objectives, namely the introduction of a special admission procedure and the adoption of conditions on entry and residence for the purpose of seasonal employment by third-country nationals, cannot be sufficiently achieved by Member States and can therefore be better achieved at Union level, the Union may adopt measures in accordance with the subsidiarity principle as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (25) This Directive respects the fundamental rights and observes the principles recognized in particular by the Charter of Fundamental Rights of the European Union.
- (26) In accordance with Articles 1 and 2 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive, and are not bound by it or subject to its application.
- (27) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

# CHAPTER I

## General provisions

### *Article 1*

#### *Subject-matter* <sup>7</sup>

This Directive determines the conditions of entry and stay of third-country nationals for the purposes of employment as seasonal workers and defines the rights of seasonal workers.<sup>8</sup>

The provisions of this Directive shall apply without prejudice to Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)<sup>9</sup> and the Convention implementing the Schengen Agreement (hereinafter 'the Schengen Convention') as regards **short-stay** visas issued for third-country nationals for the purpose of employment as seasonal workers.<sup>10</sup>

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<sup>7</sup> **AT, EE, FI, PL, PT**: scrutiny reservations. **CZ**: reservation, **AT, BE**: scrutiny reservations on all the provisions concerning visas in this Directive. **ES, FR, PT**: reservations on all the references to the Visa Code in this Directive. **CZ, FR**: seasonal workers staying for less than three months should not be covered by this Directive. **ES**: stays below three months should be covered by the Directive but these people should be issued either national visas or residence permits. **PT**: Member States should be able to issue national visas to all seasonal workers regardless of the length of stay. **DE, HU, SE** suggested to add references to Regulation (EC) No 539/2001 and the Schengen Borders Code to cover those who do not need a Schengen visa but work on the territory of a MS. **EL** suggested also a reference to Regulation (EU) No 265/2010 and pointed out that the term "short-stay visas" is not correct. **RO** enquired about countries who do not issue Schengen visas. **FI, AT** supported **Pres** suggestions in Article 1. **Cion** stated that the wording in Article 1 was legally correct but enquired about its relationship with the "without prejudice to..." clauses in specific provisions in the text. It also questioned the compatibility between the optional provisions in this Directive and the corresponding provisions in the Visa Code. Those who come for the purpose of employment and do not need a visa to enter the Schengen area are covered by Article 5 of the Borders Code. It might be useful to draw a distinction conceptionally between admission to seasonal work and admission to the territory.

<sup>8</sup> **SE**: the wording of this paragraph is misleading as this Directive cannot determine the conditions of entry and stay for stays shorter than three months.

<sup>9</sup> OJ L 243, 15.9.2009, p. 1.

<sup>10</sup> Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ L 239, 22.09.2000 p. 19.

**The provisions of this Directive shall apply without prejudice to the Convention implementing the Schengen Agreement (hereinafter 'the Schengen Convention') as regards long-stay visas issued for third-country nationals for the purpose of employment as seasonal workers.**

## *Article 2*

### *Scope*<sup>11 12</sup>

1. This Directive shall apply to third-country nationals who reside outside the territory of the Member States and apply to be admitted or who have been admitted, under the terms of this Directive, to the territory of a Member State for the purpose of employment as seasonal workers.<sup>13</sup>
2. This Directive shall not apply to third-country nationals:<sup>14</sup>

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<sup>11</sup> New Recital (12a): "This Directive [...] **should** be without prejudice to the right of Member States to issue **a short-stay visa or a long-stay visa or a residence permit other than a visa for the purpose of seasonal work or a seasonal worker permit** for any purpose of employment if a third-country national does **not fall under the scope of this Directive [...]**." **Cion** would not support the creation of a parallel system at a national level as this could result in a situation where TCN are allowed to enter for the purpose of seasonal work without the requirement to grant them the rights provided for in this Directive. If the objective of the Recital is to cover those TCN legally staying the territory of a MS, then it should state so explicitly. **AT, DE, PT, SE, BG**: scrutiny reservations on the Recital. **SE, BG**: the recital should be revisited once a decision has been taken regarding the corresponding recital in the ICT Directive. **DE** suggested to delete the end of the recital starting with "if a third-country national ...".

<sup>12</sup> **AT, DE, EL, SE, SI**: scrutiny reservations on the Article. **EE** suggested to add a new paragraph based on the wording in the Single Permit Directive: "(3) *The provisions of Chapter II and III of the Directive do not apply to third-country nationals who are allowed to work on the basis of a visa*".

<sup>13</sup> **SE**: reservation as TCN legally staying in the territory of a MS should also fall under the scope of the Directive (supported by **PT**).

<sup>14</sup> **SI**: scrutiny reservation. **SE**: it should be specified that this Directive does not apply to the citizens of EEA and Switzerland. **CZ** suggested to add the following new point in this paragraph: "*who are family members of seasonal workers.*"

- (a) who are temporarily posted<sup>15</sup> in the framework of the provision of services, irrespective of whether the undertaking is established in a Member State or in a non-Member State, as long as they are posted.<sup>16</sup>
- (b) who are working for and being assigned by employment agencies, temporary work agencies or any other undertakings engaged in making available labour to work under the supervision and<sup>17</sup> direction of another undertaking.<sup>18</sup>
- (c) **who are** family members of Union citizens who have exercised their right to free movement within the Union, in conformity with Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [...].

*Article 3*  
*Definitions*<sup>19</sup>

For the purposes of this Directive, the following definitions shall apply:

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<sup>15</sup> **AT, BE, CZ, FR:** delete "temporarily" since posting is by nature temporary. **Cion** insisted on referring to the temporary nature of posting and also on "as long as they are posted".

<sup>16</sup> **AT, ES, FI:** scrutiny reservations on point a).

<sup>17</sup> **EL:** "and/or".

<sup>18</sup> **ES, SE:** reservations, **AT, EL, FI, PL, PT:** scrutiny reservations on point b). **BE:** a positive scrutiny reservation with respect to the term "under the supervision". **ES, PT, SE:** temporary work agencies should not be excluded from the scope of the Directive as also those workers who use the services of agencies should be protected under this Directive. **SE:** this provision should thus be optional for MS. **AT:** the self-employed should be excluded from the scope *expressis verbis*. **BE, CZ, FR** supported the paragraph stating that triangular relationships should be excluded from the scope of the Directive. **DE** noted that point b) gives further clarity although it logically follows from Article 3 that temporary work agencies are excluded from the scope of the Directive. **DE** added that at the very least there should be an option for MS to exclude the agencies.

<sup>19</sup> **DE** could agree with the definitions in this Article but suggested they be revisited once other issues have been solved. A generic definition of "authorisation for seasonal work" could be considered covering Schengen visas, long-stay visas and seasonal worker permits. **FI** could support the definitions in this Article.

- (a) ‘third-country national’ means any person who is not a citizen of the European Union within the meaning of Article 20 (1) of the Treaty on the Functioning of the European Union;
- (b) ‘seasonal worker’ means a third-country national who retains his/her principal place of residence in a third country and stays temporarily for the purposes of employment in the territory of a Member State to carry out an activity dependent on the passing of the seasons, as determined by national law and/or practice, under one or more fixed-term work contracts concluded directly between the third-country national and the employer established in that Member State<sup>20, 21</sup>
- (c) ‘activity dependent on the passing of the seasons’ means an activity that is tied to a certain time of the year during which required labour levels are above those necessary for usually ongoing operations or during which specific operations need to be carried out;<sup>22</sup>
- (d) ‘seasonal worker permit’ means an authorisation issued using the format laid down in Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals bearing the words ‘seasonal worker’ entitling its holder to reside<sup>23</sup> and work in the territory of a Member State under the terms of this Directive;<sup>24</sup>

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<sup>20</sup> Recital 10: "Member States should be able to determine specific sectors of the economy and/or activities that meet the criteria for seasonal work as defined in this Directive **such as agriculture, during the planting or harvesting period, or tourism, during the holiday period.**" **BE:** the construction sector should be explicitly excluded from the scope of the Directive. **ES:** the specification of sectors is too detailed; there is no need to refer to the actual seasons. **HU, FR:** it is up to MS to determine the sectors, the examples serve no purpose and could be misleading. **AT, DE** supported the examples given in the recital as they give direction to MS but would like to leave out the references to seasons.

<sup>21</sup> **IT:** reservation. **ES, PT:** reservation on the direct work contract. **FI** pointed out that there might be a need to explicitly exclude construction work from the scope of the Directive since it is seasonal in the case of FI.

<sup>22</sup> **AT, EL, HU, NL, PL:** scrutiny reservations. **ES** pointed out that it would be more appropriate to link seasonal activities to an increased need for labour rather than the passing of the seasons.

<sup>23</sup> **LT:** "*stay and reside*".

<sup>24</sup> **AT, EE, EL, ES, FI, PT, SI:** scrutiny reservations. **DE:** reservation stating that the Directive should not regulate what to write on the permit. **AT** would prefer a less concrete remark on the permit.

- (e) 'short-stay visa' means an authorisation issued by a Member State in accordance with Article 2 (2) a) of the Visa Code;<sup>25</sup>
- (f) 'multiple-entry visa' means [...] a **short-stay visa** issued by a Member State in accordance with Article 24 (2) of the Visa Code;<sup>26</sup>
- (g) 'long-stay visa' means an authorisation issued by a Member State [...] **as provided for in Article 18 of the Schengen Convention [...]**;<sup>27 28</sup>
- (h) 'single application procedure' means a procedure leading, on the basis of one application for the authorisation of a third-country national's stay and work in the territory of a Member State, to a decision on the application for the seasonal worker permit;<sup>29</sup>
- (i) 'regulated profession' means a regulated profession as defined in Article 3(1)(a) of Directive 2005/36/EC.

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<sup>25</sup> **PT:** reservation on short-stay visas. **EL:** scrutiny reservation regarding the term "short-stay visas".. **UK** (supported by **CY, IE**) suggested to add at the end of the sentence: "... *or issued in accordance with the national law of Member States not implementing the Schengen acquis in full.*"

<sup>26</sup> **PT:** reservation on short-stay visas. **EL:** scrutiny reservation as Article 24 (2)a) of the Visa Code sets out certain conditions for issuing multiple-entry visas.

<sup>27</sup> **OJ L 85, 31.3.2010, p. 1.**

<sup>28</sup> **FI:** scrutiny reservation. **UK** (supported by **CY, IE**) suggested to add at the end of the sentence: "... *or issued in accordance with the national law of Member States not implementing the Schengen acquis in full.*"

<sup>29</sup> **EE, EL, PT:** scrutiny reservations.

#### **Article 4**

##### *More favourable provisions* <sup>30</sup>

1. This Directive shall apply without prejudice to more favourable provisions of:
  - (a) Union law, including bilateral and multilateral agreements concluded between the Union or between the Union and its Member States on the one hand and one or more third countries on the other;
  - (b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.
  
2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies in respect of Articles 13, 14, 16 and 17 of this Directive. <sup>31</sup>

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<sup>30</sup> **SE**, supported by **FI**, stated that MS should be able to continue to apply more favourable national provisions and suggested to add a new paragraph 3 following the example of Article 3(4) of the Blue Card Directive: "*This Directive shall be without prejudice to the right of the Member States to issue residence permits other than a seasonal worker permit for any purpose of employment*".

<sup>31</sup> **SI**, **SK**: scrutiny reservations. **DE**, **SK**: linguistic reservations. **ES** would like to be able to adopt more favourable provisions also in respect of Article 12.

## CHAPTER II

### Conditions of admission

#### *Article 5*

#### *Criteria and requirements for admission*<sup>32 33</sup>

1. Without prejudice to Article 9, a third-country national who applies to be admitted under the terms of this Directive or the employer shall:

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<sup>32</sup> Recital (13a) deleted. **AT** was opposed to the deletion of the text in the recital which should instead be integrated in the body of the text.

<sup>33</sup> **AT, BE, DE, EE**: scrutiny reservations. **AT, CY, DE**: MS should be able to apply other criteria of admission in accordance with their national legislations. **DE** suggested the following introductory sentence: "*Member States shall ensure that at least the following criteria for admission to a Member State under the terms of this Directive are fulfilled.*" and proposed to add the following new paragraph: "*The competent authority shall issue a visa or residence permit to seasonal workers at its own discretion.*" **EE**: add an admission criterion enabling Member States to apply a salary threshold (an obligation to pay a higher salary than the average salary in a given sector). **ES** suggested two additional criteria for admission enabling Member States to require the worker/ employer to provide a guarantee of return to a country of origin, and to require the employer to organise and bear the costs of a travel of the worker from and to the country of origin. **CZ** wanted to include an additional criterion requiring the worker to provide his/her address in the territory of the Member State concerned. **BE, LT** suggested to add an additional condition for admission similar to the one in Article 5(3) of the Researchers' Directive requiring the employer to cover the expenses related to the return of the seasonal worker in case he/she remains illegally in the territory of the MS concerned. **Cion**: no need for the addition as national provisions apply in this respect. **EL** would either like to add that "*Member States may require means of evidence, set by national legislation, which guarantee the capacity and/or needs of the respective employer to employ a certain number of seasonal workers*" or provide that Member States may add other admission criteria. **SI** did not support the idea of adding new conditions but could accept a minimum list of conditions.

- (a) present a valid work contract or, if provided for by national law or administrative regulations or practice, a binding job offer to work as a seasonal worker in the Member State concerned with an employer established in the Member State which specifies the remuneration and the working hours per week or month and, where applicable, other relevant working conditions. Member States shall require that this contract or job offer is in conformity with national labour law **and applicable collective agreements**; <sup>34</sup>
- (b) provide evidence [...] **that the third-country national has or is** <sup>35</sup> entitled to have by virtue of the application of national law <sup>36</sup>, a sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work carried out in the Member State concerned.

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<sup>34</sup> **AT**: scrutiny reservation. **FR, PT** could support **Pres** suggestion. **NL** (supported by **CY, DE, SE**) suggested to insert: "and *may require that it is in conformity with* applicable collective agreements" since it would be difficult to check all the requirements contained in collective agreements. **SE** (supported by **CY**): add at the end of the last sentence: "... *or practices in the relevant occupational branches.*" Alternatively, **DE, SE**, supported by **AT, EE, SK**, proposed the following new paragraph: "*Member States may require that all conditions according to applicable laws, regulations, administrative provisions, collective agreements or practices applicable to comparable seasonal workers in the relevant occupational branches are met with regard to pay, insurance cover and other terms of employment*". **Cion**: the paragraph is overly complicated and would lead to problems in practice; a requirement for a binding work contract in this Article together with a requirement for equal treatment in respect of working conditions in Article 16(1) should suffice. **NL** suggestion would result in complete ambiguity.

<sup>35</sup> **Cion**: insert "*or having applied for..*"

<sup>36</sup> **CY**: "... by national law *or administrative regulations or practice* ..."

<sup>37</sup> **CY, EE, EL, FI, FR, NL, PL, SK**: scrutiny reservations. **FI**: reservation. **FR** preferred the previous version of the paragraph. **CZ, ES, PT, SK** supported **Pres** suggestions in this paragraph. **FI** (supported by **MT**) suggested the following wording: "(b) provide evidence that the third-country national has [...] a sickness insurance for all the risks normally covered for nationals of the Member State concerned for *the whole period of employment* [...] where no such insurance coverage and corresponding entitlement to benefits *in kind* are provided in connection with, or as a result of, the work carried out in the Member State concerned." **LV**: sickness insurance can be connected with residence and it should be possible for MS to require that sickness insurance covers the entire period of seasonal work. **SE** also expressed concerns about "...or as a result of the work carried out.." **EE**: MS has to be able to require that a TCN has sickness insurance before entering the territory of a MS. **EL** suggested using a text similar to that of the Blue Card Directive: "*present evidence according to the national legislation of having or having applied for a sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods, where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or*

(c) provide evidence that the third-country national has accommodation as set out in Article 14.<sup>38</sup>

2. Member States [...] **may** require that the seasonal worker will have sufficient resources during his/her stay to maintain him/herself without having recourse to [...] **the social assistance system of the Member State concerned.**<sup>39</sup>

3. Third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted for the purposes of this Directive.<sup>40</sup>

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resulting from, the work contract." **Cion:** if equal treatment is provided for in Article 16, this should also apply to sickness insurance.

<sup>38</sup> **SE, SI, SK:** scrutiny reservations. **IT** would prefer a more flexible wording referring to "guarantees of accommodation". **SE** maintained that this provision should be optional for MS. **FI** pointed out that according to the Visa Code the documents set out in points a) and c) of this paragraph would always have to be submitted by the TCN and never by the employer.

<sup>39</sup> **FI:** positive scrutiny reservation. **CZ, ES** supported **Pres** suggestions in this paragraph. **FR** (supported by **PT**) questioned the purpose of this paragraph as the requirement is already contained in paragraph 1a). **SE** considered the paragraph important despite the requirements set out in paragraph 1a) as a TCN could be working part-time. **AT, DE, EE, SK:** this should be a mandatory provision as the person can move to other MS and it is also a mandatory clause in the Visa Code. **Cion:** it should be a "shall-clause" as the requirement for sufficient resources is important and there might be cases when a person is working part-time or where the expenses are too high. **FR** was opposed to this being a mandatory provision as social benefits are granted according to national legislation. **BG:** this could be a "may-clause".

<sup>40</sup> **NL:** the paragraph is formulated as a ground for refusal rather than a criterion for admission. **CY:** as this is a ground for refusal the paragraph should be moved to Article 6. **ES:** this criterion is better here since it should be checked before admission pointing out that all admission criteria are also criteria for rejection.

- 3a. **When examining an application for the long-stay visa for the purpose of seasonal employment Member States may verify whether the applicant presents a risk of illegal immigration and whether the applicant intends to leave the territory of the Member States before the expiry of the long-stay visa applied for.** <sup>41</sup>
4. Member States shall require the seasonal worker and/or the employer to present documentation attesting that the third-country national fulfils the conditions laid down under national law for the exercise by Union citizens <sup>42</sup> of the regulated profession specified in the work contract or binding job offer as provided for in national law. <sup>43</sup>
5. **For stays exceeding three months**, third-country nationals shall be in possession of a valid travel document determined by national law. [...] Member States shall require the period of validity of the travel document to cover at least the duration of the seasonal worker permit or the long-stay visa. <sup>44</sup> In this case Member States may also require the period of validity to exceed the intended duration of stay by a maximum of 6 months. <sup>45</sup>

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<sup>41</sup> **DE** (supported by **AT, CZ, EL, LT, NL**): support the provision but it should be mandatory as other MS would be affected if the person moves around in the Schengen area and this condition should be applied to seasonal worker permits too. **ES** was opposed to this provision being obligatory as it sends a negative message. **Cion** could not support this provision being obligatory pointing out that this kind of requirement is not used for other groups of migrants and therefore. **SE**: "When examining an application for a long-stay visa for the purpose of seasonal employment, Member States may *require that the third-country national does not present* a risk of illegal immigration and *that he or she* intends to leave the territory of the Member State before the expiry of the long-stay visa applied for." **FR, RO** supported **Pres** proposal for the paragraph. **HU** supported the paragraph but stated that it could also be a ground for refusal under Article 6.

<sup>42</sup> **DE**: delete "by Union citizens".

<sup>43</sup> **DE**: scrutiny reservation. **FR** expressed doubts about the relevance of this paragraph since seasonal work covers only a limited number of activities.

<sup>44</sup> **FI, NL, SE**: should be a may-clause as in the Blue Card Directive. **DE, BG, LT** insisted on "shall".

<sup>45</sup> **DE, FR** (reservation): this condition should also apply to stays not exceeding three months. **EL** suggested to draft the paragraph along the lines of Article 12a) of the Visa Code. **PT**: reservation as the current wording seems to imply that the same condition is not valid for stays not exceeding three months. **HU** could support 6 months as long as it is a may-clause but could agree to 3 months as well. **AT** supported **Pres** suggestions for this paragraph.

6. [...]

### *Article 5a*

#### *Volumes of admission*<sup>46</sup>

1. This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals entering its territory for the purpose of seasonal work.
2. An application for admission to a Member State for the purposes of this Directive may be considered inadmissible on the grounds set out in paragraph 1.<sup>47</sup>

### *Article 6*

#### *Grounds for refusal*<sup>48</sup>

1. Without prejudice to Article 32 (1) of the Visa Code, Member States shall reject an application for admission to a Member State for the purposes of this Directive whenever the conditions set out in Article 5 are not met or whenever the documents presented have been fraudulently acquired, or falsified, or tampered with.
2. Member States may verify whether the vacancy in question could be filled by nationals of the Member State concerned or by other EU citizens, or by third-country nationals lawfully residing in the Member State and already forming part of its labour market in accordance with national or Union law, in which case they may reject the application.

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<sup>46</sup> **DE:** reservation.

<sup>47</sup> **BE, FI:** there should be no possibility to appeal against a decision on inadmissibility.

<sup>48</sup> **AT:** reservation. **DE, FI:** the wording contained in Article 32 and Annex VI of the Visa Code could be used in this Article too. **CZ, EL** could not see how this Article and Article 32 of the Visa Code could be applied concurrently without encroaching on the latter. **Cion** pointed out that some of the grounds that are optional in this Article are mandatory in the Visa Code (paragraph 4) whereas others do not fit with the Visa code (paragraph 2).

This paragraph shall apply without prejudice to the principle of Union preference as expressed in the relevant provisions of the Act of Accession of 2005.<sup>49</sup>

**2a. Member States may reject an application for admission to a Member State for the purposes of this Directive on the ground set out in Article 5a (1).**

3. Member States may reject an application if the employer:<sup>50</sup>

(a) has been sanctioned in conformity with national law for undeclared work and/or illegal employment;<sup>51</sup>

or

(b) does not meet the legal obligations regarding social security, taxation and/or<sup>52</sup> working conditions, set out in national law.<sup>53</sup>

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<sup>49</sup> **AT:** scrutiny reservation on Article 6.2 and the Recital. **NL:** scrutiny reservation on paragraph 2 on whether this should be a may- or a shall-clause. This is national competence but since it should be possible to find the workers in question also in the EU, it could also be a shall-clause. **PL** expressed doubts about "may" or "shall" and about the reference to concrete Acts of Accession in subparagraph 2.

<sup>50</sup> **ES** would like to add the following ground for refusal: "*... within the 12 months immediately preceding the date of the application, has eliminated, by means of a null or unfair dismissal, the positions he is trying to fill through the new application, or has terminated a contract on which a work permit was based on a date prior to the expiry of this work permit.*"

**EL** would like MS to be able to refuse an application if there are objective reasons to believe that the employer is not in a position to employ seasonal workers.

<sup>51</sup> **IT:** scrutiny reservation. **SK:** should be a shall-clause.

<sup>52</sup> **BE:** replace with "or".

<sup>53</sup> **EE, EL, FR, IT, LT, PT:** scrutiny reservations. **SE,** supported by **DE:** "does not meet the legal obligations regarding social security *or* taxation *or if terms of employment according to applicable laws, collective agreements or practices in the relevant occupational branches are not met.*"

4. Member States may reject an application if the third-country national has not complied with the obligations arising from a previous decision on admission as a seasonal worker.<sup>54</sup>  
55

#### *Article 7*

*[...] Withdrawal<sup>56</sup> or non-renewal of the long-stay visa or the seasonal worker permit<sup>57</sup>*

1. Member States shall **withdraw or refuse to renew the long-stay visa or the seasonal worker permit** issued on the basis of this Directive in the following cases:
- (a) when it has been fraudulently acquired, or has been falsified, or tampered with;

or

  - (b) where the holder is residing for purposes other than those for which he/she was authorised to reside.
- 1a. **Member States shall refuse to renew the long-stay visa or the seasonal worker permit where the maximum duration of stay as defined in Article 11(1) has been reached.**<sup>58</sup>

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<sup>54</sup> Recital (14a): "Member States should be able to reject an application for admission in particular when the third-country national has not complied with the obligation arising from a previous admission decision as a seasonal worker to return to a third country on the expiry of **a short-stay visa or a long-stay visa or a seasonal worker permit.**"

<sup>55</sup> **EL:** a similar provision should be added with respect to employers.

<sup>56</sup> **EL:** use "annulment" as in Article 34 of the Visa Code.

<sup>57</sup> **AT, FR:** scrutiny reservations on the Article. **DE** wanted to know whether this Article applies if there is no corresponding ground for withdrawal in the Visas Code. **Cion:** if a TCN loses the status of a seasonal worker then the visa could be revoked on the basis of the Visa Code as the conditions for issuing it are no longer met. **FI** asked whether this means that there are two different decisions - one on the right to work and another one on the issuance of a visa. **Cion:** this would depend on the specific national system.

<sup>58</sup> **CZ** supported **Pres** suggestion for this paragraph. **FR:** scrutiny reservation on the maximum duration of validity of the permit. **PT:** there should be a possibility for the status of a seasonal worker to be converted into another status if the person concerned finds another job. **EL** was opposed to this as it could open up a window for other types of migration. **LT:** seasonal workers should be able to apply for another status in accordance with national legislation.

2. Member States may withdraw **or refuse to renew the long-stay visa or the seasonal worker permit** issued on the basis of this Directive whenever the conditions laid down in Article 5 were not met or are no longer met.
  
3. Member States may withdraw **or refuse to renew the long-stay visa or the seasonal worker permit** issued on the basis of this Directive if the employer: <sup>59</sup>
  - (a) has been sanctioned in conformity with national law for undeclared work and/or illegal employment; <sup>60</sup>
  
  - (b) does not meet the legal obligations regarding social security, taxation and/or working conditions, set out in national law; <sup>61</sup>
  
  - or
  
  - (c) has not fulfilled the obligations based on the work contract.
  
4. Member States may withdraw **or refuse to renew the long-stay visa or the seasonal worker permit** issued on the basis of this Directive if the third-country national has not complied with the obligations arising from the decision on admission during a previous stay as a seasonal worker. <sup>62</sup>
  
- [...]
- [...]

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<sup>59</sup> **PT** pointed out that this should be a basis for sanctions for the employer and not for the employee. **EL** also found the provision disproportionate and stated that in this case seasonal workers would be allowed to change employers as provided for in Article 11.3 (**PT** could support that).

<sup>60</sup> **DE**: scrutiny reservation as this is covered by the Sanctions Directive.

<sup>61</sup> **SE**, supported by **DE**: the same proposal as for Article 6.4 b). **DE**: scrutiny reservation.

<sup>62</sup> **EL**: a similar provision should be included with respect to employers.

*Article 7a*<sup>63</sup>

*Obligation of cooperation*

**Member States may require the employer to provide all relevant information needed for granting, withdrawal or renewal of authorisation for the purpose of seasonal work.**<sup>64</sup>

*Article 7b*

*Sanctions*<sup>65</sup>

1. Member States shall provide for sanctions against employers who have not fulfilled the obligations based on this Directive. **Such sanctions shall include exclusion from applications for seasonal workers for up to 3 years.** Those sanctions shall be effective, proportionate and dissuasive.<sup>66</sup>
2. **An application for admission to a Member State for the purposes of this Directive may be considered inadmissible if the employer has been excluded from applications for seasonal workers on the grounds set out in paragraph 1.**<sup>67</sup>

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<sup>63</sup> Recital (14b): "Member States should be able to require the employer to cooperate with the competent authorities and to provide all relevant information **needed for granting, withdrawal or non-renewal of the authorisation for the purpose of seasonal work** [...] in order to prevent possible abuse and misuse of the procedure set out in this Directive."

<sup>64</sup> **ES** pointed to the incompatibility between the title which refers to an obligation and the text of the Article which optional for MS. **PT** (scrutiny reservation) questioned the necessity of the Article as it is not possible to require more than what is set out in the admission criteria. **RO** supported **Pres** suggestions in this Article. **Cion** asked how "all relevant information" could be applied in practice.

<sup>65</sup> **EE, ES, FR, IT**: scrutiny reservations on the Article. **EL, RO** supported **Pres** suggestions in this Article.

<sup>66</sup> **AT, BE, LT**: scrutiny reservations. **DE**: longer exclusion than 3 years should be possible, a reference to a certain time period could be made instead. **SE** opposed **Pres** suggestion in this paragraph as it should be left for MS to decide on sanctions. **EE, SE, PT**: the second sentence should not be drafted as an obligation. **Cion**: it is important for these sanctions to stay mandatory while the time limit can be discussed.

<sup>67</sup> **PT**: scrutiny reservation.

## CHAPTER III

### Procedure and [...] **authorisation for the purpose of seasonal work**

#### *Article 8*

##### *Access to information*

Member States shall take the necessary measures to make available information on conditions of entry and **stay**, including rights and all documentary evidence needed for an application to **stay** and work in the territory of a Member State as a seasonal worker.

#### *Article 9*

##### *Applications for a **long-stay visa or a seasonal worker permit***<sup>68</sup>

1. Member States shall determine whether an application is to be made by the third-country national and/or by the employer.
2. Member States shall designate the authority competent to receive the application and to issue the seasonal worker permit.<sup>69</sup>
3. The application for a seasonal worker permit shall be submitted in a single application procedure.<sup>70</sup>

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<sup>68</sup> **AT, EE, HU, PT**: scrutiny reservations. **DE** would like to add the following new paragraph: "*Member States may determine that the placement of seasonal workers from third countries must be carried out by a government agency.*" **AT** supported that proposal and suggested to provide for the possibility of social partners to participate in the decision-making procedure. In line with the second sentence of Article 2 (1) **SE** suggested to add that "*Member States may accept, in accordance with national law, an application submitted when the third-country national concerned is legally staying in its territory*".

<sup>69</sup> **DE**: reservation.

<sup>70</sup> **EE, EL, AT**: scrutiny reservations.

4. The Member State concerned shall grant the third-country national whose application for a seasonal worker permit has been accepted every facility to obtain **a short-stay visa or** a long-stay visa if required for the purpose of initial entry. <sup>71</sup>
  
5. For the purposes of Article 11 (2) and (2a), Member States shall accept the submission of an application for [...] **the renewal of the long-stay visa for the purpose of seasonal employment or the seasonal worker permit** by a third-country national admitted under the terms of this Directive to the territory of the Member State concerned. <sup>72</sup>

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<sup>71</sup> **NL:** delete the reference to "every facility" as it is too broad and potentially problematic, suggested "*shall facilitate in obtaining a visa*" instead. **EL, HU:** scrutiny reservations regarding "every facility" which is unclear and could create problems. **EL** suggested to replace "to obtain" with "to *apply for*". **DE** expressed similar concerns and suggested to delete the paragraph. **ES:** reservation (the term "every facility" is too vague and confusing). **EL** suggested using the wording in Article 7(1) of the Blue Card Directive. **FR:** reservation (regarding the long-stay visa). **EE** suggested referring to visas without specifying the type of a visa. **AT:** add at the end of the paragraph: "... *in accordance with respective provisions*". **SE** expressed concerns regarding "every facility" and pointed out that this provision would be better placed in Article 10. **Cion** explained that the intention of the original proposal was to make sure that an entry visa is granted if a permit is granted.

<sup>72</sup> **EL:** scrutiny reservation as it should be an optional clause. **Cion:** it should stay a shall-clause. **ES:** reservation asking what to do in the case of short-stay visas if there is a need to extend the stay. **Cion:** in this case the nature of the visa could be changed (limited territorial validity) or the stay could be changed from short-stay into long-stay. **BE:** this would create two types of seasonal workers - those who can extend their stay and those who cannot. **HU:** scrutiny reservation on the renewal of the long-stay visa due to the short nature of seasonal work.

## Article 10

### Authorisation for the purpose of seasonal work<sup>73</sup>

1. [...] Member States shall grant seasonal workers<sup>74</sup> who fulfil the admission criteria as set out in Article 5, and for whom the competent authorities have issued a positive decision, a short-stay visa if required<sup>75</sup> by Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement<sup>76</sup>, **a long-stay visa or a seasonal worker permit.**<sup>77</sup>
  
2. [...] Member States may issue a work permit as part of an authorisation for the purpose of seasonal work:<sup>78</sup>
  - a) **when a short-stay visa is not required in accordance with Council Regulation (EC) No 539/2001;**
  
  - b) **when a short-stay visa is required in accordance with Council Regulation (EC) No 539/2001;**

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<sup>73</sup> AT, FI, FR: reservations. DE, EE, FI, IT, PL, RO: general scrutiny reservations. HU supported Pres suggestions in this Article.

<sup>74</sup> CY pointed out that reference should be made to "applicants" instead as this is not in line with the definition in Article 3(b).

<sup>75</sup> Cion: "*in accordance with*".

<sup>76</sup> OJ L 81, 21.3.2001, p. 1.

<sup>77</sup> PT: reservation. FR: scrutiny reservation regarding short-stay visas. SI would like to be able to issue seasonal worker permits also for short stays. FI, SK: MS should be able to issue residence permits regardless of the length of stay. EE, PT: would like to be able to issue national visas also for stays shorter than 3 months. CZ: reservation as the Directive should not cover stays shorter than 3 months as this constitutes interference with the Visa Code. DE, EL, ES, FI, SE questioned the obligatory nature of the paragraph as in addition to the criteria in Article 5 the criteria in the Visa Code would have to be met and suggested that it should be a "may-clause" instead. Pres replied that this is not an automated procedure referring to Article 1 which states that the provisions of the Visa Code and the Schengen Convention apply. FI, SE: remove the reference to short-stay visas. ES, DE enquired whether an explicit reference should be made to Article 4(3) of Regulation (EC) 539/2001.

<sup>78</sup> New Recital (15a): "**Member States should have the possibility to issue a work permit for the purpose of seasonal work when the single application procedure does not apply.**" AT: scrutiny reservation on the recital.

c) **when Member States issue a long-stay visa for the purpose of seasonal employment.**<sup>79</sup>

3. The seasonal worker permit shall be issued by the competent authorities of the Member States using the format as laid down in Council Regulation (EC) No 1030/2002<sup>80</sup>. In accordance with point (a) 6.4 of the Annex to that Regulation, Member States shall enter 'seasonal worker' under the heading 'type of permit'.<sup>81</sup>
4. In accordance with with point 12 of the Annex to Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas<sup>82</sup>, Member States shall enter 'seasonal worker' **and the Member State concerned** under the heading [...] '**remarks**' on **the short-stay** visa sticker. In accordance with Article 18 of the Schengen Convention, Member States shall enter 'seasonal worker' under the heading [...] '**remarks**' on **the long-stay** visa sticker.  
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<sup>79</sup> **EL:** scrutiny reservation. **FR:** scrutiny reservation on the distinction between short stays and long stays. **NL** supported **Pres** suggestions for this paragraph and stated that MS should be able to give additional information related to the employment relationship as set out in Article 6 of the Single Permit Directive.

<sup>80</sup> **EL:** "... *as amended by Regulation (EC) 380/2008*".

<sup>81</sup> **AT:** scrutiny reservation. **NL** stated that MS should be able to give additional information related to the employment relationship as set out in Article 6 of the Single Permit Directive.

<sup>82</sup> **OJ L 164, 14.7.1995, p. 1.**

<sup>83</sup> **AT, ES, PT:** scrutiny reservations. **CZ** noted that "seasonal worker" would not fit on the visa sticker. **FR:** scrutiny reservation on the reference to Article 18 of the Schengen Convention and on the distinction between short stays and long stays. **EL** suggested to add : "Article 18 of the Schengen Convention *as amended by Regulation (EU) 265/2010*" pointing out that the comment must be inserted in the language of the MS concerned. **DE:** scrutiny reservation as this issue falls under national competence; furthermore, intra-EU mobility does not concern this category of workers.

*Article 11*  
*Duration of stay*<sup>84</sup>

1. Seasonal workers shall be allowed to stay for a maximum of five to nine months in any period of twelve months, after which they shall return to a third country.<sup>85</sup>
2. Within the maximum period determined by Member States in accordance with paragraph 1, and provided that the criteria of Article 5 are met, seasonal workers shall be allowed to extend their contract and apply for a renewal of **the long-stay visa or** the seasonal worker permit.<sup>86</sup>
- 2a. Within the maximum period determined by Member States in accordance with paragraph 1, and provided that the criteria of Article 5 are met, seasonal workers may be allowed to be employed with a different employer and apply for a renewal of **the long-stay visa** or the seasonal worker permit.<sup>87</sup>

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<sup>84</sup> **AT:** reservation on the Article as it goes against the principle of subsidiarity. **DE:** reservation on the Article related to renewal. **AT, BE, EL, FR:** scrutiny reservations on the Article. **PT** (scrutiny reservation), **ES** (reservation) on the Article regarding the impossibility to extend short-stay visas; seasonal workers should be given visas that can be extended.

<sup>85</sup> **AT:** the paragraph does not provide sufficient flexibility to MS preferring the time period of 12 months within 14 months as it has two seasons. Many seasonal workers are employed during both seasons. After 12 months of employment the foreign worker has to leave the country for two months. The system has worked well so far and any changes to it would endanger business prospects and jobs. **DE, FI:** scrutiny reservations. **EL, FI** regretted such an open formulation that does not lead to harmonisation. **EL:** reservation on the 12-month period. **FR** would prefer the maximum of 6 months in a year with a residence card that is valid for 3 years after which it can be renewed. **BE, NL, PL** could support the **Pres** suggestion. **SE:** delete "after which they shall return to a third-country" at the end of the paragraph. **EL:** replace with ".. after which they shall *leave the Schengen area*".

<sup>86</sup> **EE, HU:** scrutiny reservations concerning the renewal of the long-stay visa as it contradicts the temporary nature of this kind of employment. **AT:** it should be up to MS to decide whether long-stay visas can be extended or not. **EL:** add in paragraphs 2 and 2a) a reference to "a maximum period of five to nine months after which they shall return to a third country". **BE:** it should be a may-clause. **CZ:** the provision needs to be more flexible.

<sup>87</sup> **EE, HU:** it is not clear whether a permission from the authorities is required for the change of employers. **SE** stated that it is hard to see how the criteria in Article 5 can be checked as the change of employers is not notified to the authorities. **BE, CZ, EL** suggested to add "*.. in accordance with national law and practice.*" **DE** proposed an alternative wording: "*without prejudice to the right of Member States to allow for the change of employers...*" **BE:** add at the end of the paragraph: "*... in accordance with national law and practice.*" **MT** enquired whether seasonal workers can have more than one job at the same time. **BE** insisted that a seasonal worker status should be connected to one contract only.

3. During the legal stay on the basis of a **short-stay-visa or a long-stay visa** or a seasonal worker permit or visa, seasonal workers may be allowed to be employed with a different employer as long as the conditions set out in Article 5 are met.<sup>88</sup>

## Article 12

### *Facilitation of re-entry*<sup>89 90</sup>

1. Member States may
- (a) upon application, issue up to three seasonal worker permits or multiple-entry visas<sup>91</sup> covering up to three subsequent seasons within one administrative act,
- and/or

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<sup>88</sup> **AT** stated that this possibility should be available only if there is an agreement of the Member State (or a decision by its authorities) taking also into account Articles 5a and 6. **BE, EL, SE:** the same comments as for paragraph 2a. **FI** wanted to know how it would be possible for an ICT to change employers if he/she works on the basis of a visa. **NL** suggested to add to the end of the paragraph: "*Before the seasonal worker is employed with a new employer, the Member State may check if the criteria in Article 5 are fulfilled.*" **BE:** add at the end of the paragraph: "... in accordance with national law and practice."

<sup>89</sup> Recital (17): "Circular migration of third-country national seasonal workers should be promoted. In order for seasonal workers to have employment prospects in the EU for periods beyond a single season and for EU employers to be able to rely on a more stable and already trained workforce, the possibility of access to seasonal employment for several consecutive years should be provided, either through [...] **multiple-entry visas or three seasonal worker permits issued in one administrative act** or a facilitated procedure. This procedure should include preference over admissions of third-country nationals applying to be admitted as seasonal workers for the first time or reduced processing times, or less documentary evidence being required." **AT:** scrutiny reservation on the recital as not clear about the reference to circular migration in this context. **AT, DE:** use "could" in the first sentence.

<sup>90</sup> **AT:** scrutiny reservation on the Article regarding the compatibility with the Visa Code. **FR** pointed out that multiple-entry visas are valid for three out of six months and do not enable to work for more than five months.

<sup>91</sup> **FI** suggested to delete "multiple-entry visas" or use it in the singular for the paragraph to be in line with Article 24(2) of the Visa code. **FR** pointed out that multiple-entry visas are valid for three out of six months and could not be used for seasonal work for five or more months.

- (b) provide a facilitated procedure for third-country nationals who were admitted to that Member State as seasonal workers and who apply to be admitted as such in a subsequent year.<sup>92</sup>

### *Article 13*

#### *Procedural safeguards*

1. The competent authorities of the Member State shall adopt a decision on the application for a seasonal worker permit or long-stay visa and notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State, as soon as possible but not later than 60 days from the date on which the complete application was lodged.<sup>93</sup>
2. Where the information supplied in support of the application for a seasonal worker permit or long-stay visa is inadequate, the competent authorities shall notify the applicant within a reasonable period of the additional information that is required and set a reasonable deadline for providing it.<sup>94</sup>

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<sup>92</sup> **EL** noted that issuing multiple-entry visas could involve a number of problems and stated that a facilitated procedure could only be applied to cases that concern the same employer and the same employee and suggested to add "... *under the terms set out by national legislation*". **Pres** clarified that the maximum period of validity of the visa would be 5 years during which period a seasonal worker could spend in a MS 3 months out of 6 months during one season. **PL**: it would be difficult to carry out a labour market test in case of a multi-season authorisation as it is impossible to predict the situation in three years' time. **SI**: it would be technically problematic to issue multiple-entry visas as it is not possible to insert 3 separate remarks on the document. **Cion** clarified that it could be one administrative act covering 3 seasons and only the end of the third season would be indicated on the card.

<sup>93</sup> **AT, EL, FI**: reservations on "60 days". **EL, DE, MT, SE** would prefer "as soon as possible" without a deadline. **LV**: scrutiny reservation. **ES**: reservation as 60 days is too short, would prefer 90 days. **NL** would prefer 90 days which is the same period as set out in the Blue Card Directive.

<sup>94</sup> **PL** suggested to follow the example of the Blue Card Directive and provide for the possibility to suspend the period laid down in paragraph 1 or to reject the application. **DE**: the paragraph should be deleted as unnecessary.

3. Any decision rejecting an application, or any decision not to renew or to withdraw **the long-stay visa or the seasonal worker** the permit, shall be notified in writing to the applicant and shall be open to a legal challenge in the Member State concerned in accordance with national law. <sup>95</sup> The notification shall specify the reasons for the decision, the possible redress procedures available and the time limit for taking action. <sup>96</sup>

#### *Article 14*

##### *Accommodation*

Member States shall require the applicant to provide evidence that the seasonal worker will benefit from accommodation that ensures an adequate standard of living according to national legislation and/or practice. If the accommodation is provided by the employer and the seasonal worker is required to pay rent for such accommodation, its costs shall not be excessive in relation to their remuneration. <sup>97</sup>

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<sup>95</sup> **DE**, supported by **SK**, suggested the following wording: "... shall be notified ... to the applicant *in accordance with the notification procedures under the relevant national legislation*. The notification shall specify ... the possible redress procedures available and the time limit for taking action." **EE**: scrutiny reservation concerning "legal challenge" as an administrative appeals procedure is used in the case of visas; suggested "*an appeals procedure according to national law*" (supported by **AT**).

<sup>96</sup> **EL**: scrutiny reservation. **DE**, **FI**: reservations. **AT**: linguistic reservation. **HU**: a delayed entry into force of the legal remedy could be foreseen.

<sup>97</sup> **SE** was opposed to this being an obligatory provision as it would be difficult to apply in practice. It would be enough to ensure that wages are sufficient to cover that costs of accommodation. **FI**: scrutiny reservation sharing the concerns of **SE** and pointing out that also the accommodation found by a seasonal worker would have to be up to standard although asking how MS would ensure that since no relevant national legislation or practice exists in all MS. **FR** would prefer the earlier version referring to "employers" pointing out that the term "applicant" has not been used elsewhere in the Directive and it is not clear whether it refers to a seasonal worker or employer or both. **EL** also preferred the earlier version. **DE**: reservation; would prefer the original **Cion** proposal for this Article pointing out that the first sentence is confusing since the term "applicant" could also refer to a seasonal worker. In addition, the costs of accommodation should not be excessive in other cases either and not only when the accommodation is provided by the employer. **AT**: scrutiny reservation pointing out that the last sentence of the paragraph is in conflict with private law and would be difficult to apply in practice. **Pres** replied that in light of the remuneration specified in the contract it could be assessed whether the rent is excessive.

## CHAPTER IV RIGHTS

### *Article 15*<sup>98</sup>

*Rights on the basis of the seasonal worker permit/the short-stay visa or the long-stay visa*

During the period of validity of a seasonal worker permit **or a short-stay visa or a long-stay visa, issued for the purpose of seasonal employment**, the holder shall enjoy at least the following rights:<sup>99 100</sup>

- (a) the right to enter and stay in the territory of the Member State issuing the **seasonal worker permit or the short-stay visa or the long-stay visa, provided that the holder meets all the admission requirements in accordance with national law and Union law;**<sup>101</sup>
- (b) free access to the entire territory of the Member State issuing the **seasonal worker permit or the short-stay visa or the long-stay visa** within the limits provided for by national law;<sup>102</sup>

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<sup>98</sup> **AT, ES:** scrutiny reservations.

<sup>99</sup> Recital (19a): "Third-country nationals who are in possession of a valid travel document and an authorisation for the purpose of seasonal work issued under this Directive by a Member State applying the Schengen acquis in full, should be allowed to enter into and move freely within the territory of the Member States applying the Schengen acquis in full, for a period up to three months **in any six-month period in** accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and Article 21 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (Schengen Implementing Convention)."

<sup>100</sup> **DE:** scrutiny reservation. **AT:** scrutiny reservation regarding the references to visas here. **CZ:** while Chapters 2-3 of the Directive should not apply to those staying less than 3 months, rights should be granted to all seasonal workers regardless of the length of stay.

<sup>101</sup> **EL:** the provision would be contradictory to the Visa Code as the latter provides no automatic right of entry. **SE** questioned whether the part of the sentence starting with "provided that..." is necessary. **Cion** had similar concerns stating that national law cannot regulate short stays.

<sup>102</sup> **LT** did not see the added value of points a) and b) as they are regulated in other acts.

- (c) the right to exercise the concrete employment activity authorised under the **seasonal worker permit as well as under the short-stay visa or the long-stay visa and the work permit, if required**, in accordance with national law.<sup>103</sup>

### *Article 16*

#### *Rights*<sup>104</sup>

1. Seasonal workers admitted under this Directive shall enjoy equal treatment with nationals of the Member State concerned with regard to:<sup>105</sup>
  - (a) Working conditions, including pay and dismissal<sup>106</sup> as well as health and safety requirements at the workplace, applicable to seasonal work as laid down by law, regulation or administrative provision and/or [...] applicable collective agreements in the Member State to which they have been admitted according to this Directive. [...]<sup>107</sup>
  - (b) freedom of association and affiliation and membership of an organisation representing workers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;

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<sup>103</sup> NL, supported by HU, suggested to add a reference to a concrete employer.

<sup>104</sup> BE, CZ, EL, LT, RO, SI, SK: scrutiny reservations. EL: reservation. SE: the Article should be called "*Equal treatment*". CZ could support Pres suggestions in this Article.

<sup>105</sup> AT: scrutiny reservation on paragraph 1.

<sup>106</sup> AT: scrutiny reservation as "dismissal" should be replaced with "*termination of the contract*"; dismissal under national law means termination of a contract with immediate effect.

<sup>107</sup> FI, SE supported Pres suggestions in this paragraph. AT: scrutiny reservation. BE, DE, ES: end the paragraph with "at the workplace".

- (c) provisions in national laws regarding the branches of social security as defined in Article 3 of Council Regulation (EC) No 883/04;<sup>108</sup>
- (d) payment of statutory pensions based on the worker's previous employment under the same conditions as nationals of the Member States concerned when they move to a third country;<sup>109</sup>

<sup>108</sup> **BG, FI:** reservations. **AT, EL, ES, IT, MT, PL, SI:** scrutiny reservations. **ES** found the wording too vague; it should be specified which branches apply. **CY:** scrutiny reservation on equal treatment regarding all benefits. **DE:** reference should be made to Article 3(1) of Regulation 883/04. **IT:** reservation regarding unemployment benefits. **EL** referring to unemployment benefits in particular, questioned whether equal treatment with respect to all branches of social security is justified for this category of persons who stay in a MS only temporarily. **MT:** the paragraph is drafted too broadly, it should be clear that only benefits stemming from employment relationship are granted excluding unemployment benefits. **Cion:** there is normally a qualifying period for unemployment benefits. **BG** was against granting any residence-based benefits to seasonal workers also suggesting that the legal base should be extended to Article 153 of the Treaty. **LT:** equal treatment in social security should be limited to contribution-based benefits. **FR:** the general principle of full equal treatment of seasonal workers regarding social security should apply and then it would be up to MS to apply their national law accordingly. **FI** could support the general principle of equal treatment but this should not infringe on MS' rights to organise their social security systems; thus certain exceptions should be possible as seasonal workers do not fulfil the residence condition in FI system. **FI** referred to its proposal in doc 7877/11 but could also support **CZ** proposal (alternative 2) in doc. 17269/10. **SK** expressed support for FI proposal in doc. 7877/11 stating that seasonal workers do not qualify for all benefits due to their short stay. **SI** also stated that certain exceptions to equal treatment should be allowed and residence-based benefits could be excluded favouring **CZ** proposal in doc. 17269/10. **LV** considered that for this reason it is not appropriate to refer to all the branches in Regulation 883/04. **Cion** did not support the suggestion to change the reference to Article 3(1) and explained that the purpose of the reference to Regulation 883/04 is only to define the categories of benefits and noted that limiting equal treatment to contribution-based benefits only is far below the practice in the EU, furthermore, contrary to national systems, no clear distinction between contributory and non-contributory benefits is made at the EU level. **Cion** also commented that it is clear from the Directive that seasonal workers reside temporarily in the territory of the EU. It added that while there is a clear distinction between residents and non-residents in the field of social security, there is no such clear distinction in migration law.

<sup>109</sup> **BG:** reservation. **AT, EL:** scrutiny reservations. **FR:** full equal treatment should be granted as seasonal workers pay their contributions. **IT:** reference should be made to bilateral agreements similarly to the corresponding provision in the ICT Directive.

(e) access to goods and services and the supply of goods and services made available to the public, except [...] **procedures for obtaining housing as provided for by national law, without prejudice to the freedom of contract in accordance with Union and national law**, and services afforded by employment [...] **offices**.<sup>110</sup>

2. Member States may decide that point (c) of paragraph 1 with regard to family benefits shall not apply to third-country nationals who have been authorised to work as seasonal workers in the territory of a Member State.<sup>111 112</sup>
3. The right to equal treatment provided for in paragraph 1 shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the **the long-stay visa or the seasonal worker** permit in accordance with Article 7.<sup>113</sup>

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<sup>110</sup> **SI** supported **Pres** suggestions in this paragraph. **FR**: scrutiny reservation regarding housing. <sup>111</sup> Recital 22a deleted. **LT**: the recital should be re-inserted. **Cion**: reference should be made to the rights to survivor's pensions.

<sup>112</sup> **ES, FR, HU, PT**: scrutiny reservations. **BG, IT**: reservations. **HU** in principle agreed with exceptions to the principle of equal treatment regarding family benefits. **FI** (reservation), **LT**: MS should have a right to decide on exceptions in other fields besides family benefits such as residence based benefits. **FI**: add the following paragraph: "*In addition, Member States may decide that point (c) of paragraph 1 with regard to sickness benefits in kind is conditional to having sickness insurance as set out in Article 5(1) (b) of this Directive*". **DE** supported **Pres** suggestion for the paragraph. **EL**: the paragraph goes in the right direction. **PT** could see no objective reason why equal treatment should not be granted with respect to family benefits. **ES** asked what benefits are meant as no family reunification is provided for under the Directive. **Cion** opposed any derogations from the principle of equal treatment with national workers and explained that although no family reunification is foreseen under the Directive, family members could be on the territory of a MS on the basis of national provisions.

<sup>113</sup> **AT, PT**: scrutiny reservations.

<sup>114</sup> **DE**, supported by **SK**, suggested to add the following subparagraph: "*The right to equal treatment provided for in this article does not include study and maintenance grants and loans or other grants and loans regarding secondary and higher education and vocational training*".

## *Article 17*

### *Facilitation of complaints*<sup>115</sup>

Member States shall ensure that third parties which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring compliance with this Directive<sup>116</sup>, may engage either on behalf of or in support of a seasonal worker, with his/her approval, in any administrative or civil proceedings provided for with the objective of implementing this Directive.

## CHAPTER V

### Final provisions

## *Article 18*

### *Statistics*<sup>117</sup>

1. Member States shall communicate to the Commission statistics on the number of **seasonal worker** permits and **short-stay or long-stay** visas issued for the first time or renewed and, as far as possible, on the number of **seasonal worker** permits and **short-stay or**<sup>118</sup> **long-stay** visas withdrawn for the purpose of seasonal employment to persons who are third-country nationals, disaggregated by citizenship, age and sex, length of validity of the permit and economic sector<sup>119</sup>

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<sup>115</sup> **AT, DE, EE:** reservations. **EL, IT:** scrutiny reservations. **SE** noted that the heading of the Article is not in line with the content and should thus be amended.

<sup>116</sup> **FI** (supported by **NL**): insert "*as regards a long-stay visa or a seasonal worker permit*" for the paragraph not contradict Article 32(3) of the Visa Code.

<sup>117</sup> **DE:** reservation. **AT:** scrutiny reservation. **FR, PT:** reservations on **Pres** suggestions in this Article. **PT:** scrutiny reservation on the types of data to be provided, data should be provided in accordance with Regulation No 862/2007 (supported by **AT, DE**). **EE** could accept the Article since MS can decide what data to provide.

<sup>118</sup> **Cion:** "*and*".

<sup>119</sup> **EL, ES, PL:** scrutiny reservations. **SI:** delete "economic sector". **DE:** delete "or renewed and, as far as possible, on the number of residence permits and visas withdrawn" and "disaggregated by citizenship, age and sex, length of validity of the permit and economic sector".

2. The statistics referred to in paragraph 1 shall be communicated in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council.<sup>120</sup>
3. The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be communicated to the Commission within six months of the end of the reference year. The first reference year shall be [*the year following the point of time referred to in Article 20(1)*].

### **Article 19**

#### *Reporting*

Every three years, and for the first time no later than [*three years after the date of transposition of this Directive*], the Commission shall submit a report to the European Parliament and to the Council on the application of this Directive in the Member States and shall propose any amendments necessary.<sup>121</sup>

### **Article 20**

#### *Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by (*24 months from the date of publication in the Official Journal of the European Union*) at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.<sup>122</sup>

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<sup>120</sup> OJ L 199, 31.7.2007, p. 23.

<sup>121</sup> **DE**: reservation.

<sup>122</sup> **DE, SI** were opposed to the requirement to communicate correlation tables to the Commission. **PT**: reservation on the obligation to send correlation tables and the transposition period. **IT, LV**: scrutiny reservations on the obligation to send correlation tables. **CY, EL** were opposed to any references to correlation tables, even in the recitals. **AT, DE, CY** stated that the transposition period should be 3 years.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

### ***Article 21***

#### *Entry into force*

This Directive shall enter into force on the day following its publication in the *Official Journal of the European Union*.

### ***Article 22***

#### *Addressees*

This Directive is addressed to the Member States, in accordance with the Treaty on the Functioning of the European Union.

Done at Brussels, [...]

*For the European Parliament*

*For the Council*

*The President*

*The President*

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